

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG DIVISION**

ELECTRONICALLY FILED Dec 12 2023 U.S. DISTRICT COURT Northern District of WV
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BRISTOL SPRINGS CUSTOM HOMES, LLC

Plaintiff

Civil Action No. 3:23-CV-246 (Groh)

v.

ARGO GROUP US, INC., and
COLONY INSURANCE COMPANY

Defendants.

NOTICE OF REMOVAL

Defendants Argo Group Us and Colony Insurance Company, by and through undersigned counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby respectfully submit this Notice of Removal of this civil action from the Circuit Court of Berkeley County, West Virginia, where it is currently pending, to the United States District Court for the Northern District of West Virginia. The grounds for removal are as follows:

STATEMENT OF THE CASE

1. On November 13, 2023, Plaintiff Bristol Springs Custom Homes (“Bristol Springs”) initiated this action by filing a Complaint in the Circuit Court of Berkeley County, West Virginia, captioned *Bristol Springs Homes, LLC. v. Argo Group US, Inc. et al*, No. CC-02-2023-C-453. A copy of the Summons and Complaint is attached hereto as Exhibit A.

2. Bristol Springs alleges that it is entitled to payment under a commercial general liability insurance policy issued by Colony Insurance Company (“Colony”) in connection with the

underlying action pending in the Circuit Court of Morgan County, West Virginia, styled *Ritter et al. v. Bristol Springs Custom Homes, LLC* (No. CC-33-2021-C-72) (the “Underlying Action”). Complaint, *passim*.

3. The underlying plaintiffs in the Underlying Action alleged that Bristol Springs failed to perform its general contractor duties as required under a construction contract to build their home. A true and correct copy of the underlying complaint is attached hereto as Exhibit B.

4. On or about October 11, 2023, the jury found in favor of the underlying plaintiffs on their breach of contract and negligence claims, awarding them \$325,000 in damages. A true and correct copy of the Verdict Of The Jury is attached hereto as Exhibit C.

5. On or about October 30, 2023, Bristol Springs filed a Motion for New Trial Or, In The Alternative, To Alter Or Amend Judgment (“Motion for New Trial”). A true and correct copy of the Motion for New Trial is attached hereto as Exhibit D.

6. Bristol Springs thereafter purportedly filed a bankruptcy petition¹, which resulted in the underlying court issuing an Order Staying Case Due to Suggestion of Bankruptcy (entered November 9, 2023), attached hereto as Exhibit E.

7. As will be detailed in Defendants’ responsive pleading, following the verdict, Colony began negotiating a settlement with underlying plaintiffs, which would include a release of all underlying claims. Following its purported bankruptcy filing, however, Bristol Springs’ counsel informed Colony’s adjuster that Colony no longer had authority to negotiate a settlement on behalf of Bristol Springs given the bankruptcy. To date, Bristol Springs has not responded to requests for it to resume cooperating with Colony’s efforts to resolve/settle the Underlying Action.

¹ Bristol Springs has not provided Colony with copies of its bankruptcy filings.

8. Rather, Bristol Springs filed the present action alleging breach of contract and “bad faith” for, *inter alia*, refusal to settle the Underlying Action. *See, e.g.*, Exh. A, ¶ 97 (“Colony...breached the contract of insurance by refusing to settle with the Ritter” plaintiffs).

9. Bristol Springs also alleges that the jury “assessed damages in the amount of \$325,000”, and that Colony has improperly “refused to pay the [\$325,000] judgement...” *Id.*, ¶ 55, 56. *See also Id.*, ¶ 93 (alleging breach of contract because, “after a verdict was entered against Bristol Springs..., defendant Colony...refused to pay the judgment.”).

10. For the reasons set forth more fully below, this Court has original jurisdiction over the subject matter under 28 U.S.C. §1332 because the parties are citizens of different states and the matter in controversy exceeds \$75,000.

THE PARTIES ARE DIVERSE

11. Bristol Springs pleads that it is “a West Virginia limited liability company” with “its principal office” in West Virginia, that Colony “is a Virginia Corporation” with “a principal office” in Illinois, and that Argo Group US, which employed the adjuster referenced in the Complaint, “is a Delaware Corporation” with “a principal office” in Texas. Exh. A., ¶ 1-6.

12. Upon information and belief, Bristol Springs is a West Virginia limited liability company with its principal place of business in West Virginia, and its two members, Charles Hogendorp and Betty Hogendorp, are citizens of Maryland. No member of Bristol Springs is a citizen of Virginia, Illinois, Delaware or Texas.

13. Colony is incorporated in Virginia with its principal place of business in Illinois.

14. Argo Group US is incorporated in Delaware with its principal place of business in Texas.

15. Accordingly, Bristol Springs is diverse from the Defendants and the requirements for removal based on diversity of citizenship are satisfied.

TIMELINESS

16. On November 13, 2023, counsel for Bristol Springs emailed counsel for Defendants a copy of the Complaint, which was filed on November 13, 2023. A copy of the November 13, 2023 e-mail is attached hereto as Exhibit F. The Complaint was subsequently served on or about November 20, 2023 by the Secretary of State of West Virginia. A copy of the transmittal letter from the Secretary of State is attached hereto as Exhibit G.

17. A copy of the docket sheet from the Circuit Court of Berkeley County is attached hereto as Exhibit H. As reflected on the Docket Sheet, Bristol Springs served the Defendants with a Summons and Complaint and separately served written discovery on the Defendants. A copy of the discovery served on Defendants is attached hereto as Exhibit I.

18. Pursuant to 28 USC § 1446(a), a copy of all process, pleadings and orders received by Defendants are attached hereto as Exhibits A, G and I.

19. This Notice of Removal is timely filed within thirty days of receipt of the Complaint, pursuant to 28 U.S.C. § 1446(b)(1).

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000, EXCLUSIVE OF INTEREST AND COSTS

20. As shown, Bristol Springs alleges that Colony is required to pay the underlying \$325,000 verdict, which it claims is for damages covered under the Colony policy. Complaint, *passim*. It further seeks “compensatory and punitive damages against the defendants”, as well as “attorneys’ fees”. *Id.* p. 22.

21. Accordingly, the amount in controversy is in excess of the \$75,000 required for diversity jurisdiction under 28 U.S.C. § 1332(a).

VENUE

22. The United States District Court for the Northern District of West Virginia is the federal judicial district encompassing the Circuit Court of Berkeley, where this action is pending. For purposes of removal, venue lies in this Court pursuant to 28 U.S.C. § 1441(a).

23. Prompt written notice of this Notice of Removal is being sent to Bristol Springs through its counsel, and a copy of this Notice of Removal will be filed with the Clerk of Circuit Court of Berkeley, as required by 28 U.S.C. § 1446(d).

CONCLUSION

Based upon the foregoing, the requirements of 28 U.S.C. §§ 1332, 1441, and 1446 have been satisfied and the within matter is properly removable. Defendants, therefore, respectfully requests that this Court accept and take jurisdiction of this action. This Notice of Removal is filed subject to and with full reservation of rights, including any and all defenses and objections. No admission of fact, law or liability is intended by this Notice of Removal, and all defenses, motions, and pleas are expressly reserved.

Respectfully submitted,

/s/ Matthew J. Perry
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*Counsel for Defendants Argo Group Us
and Colony Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed electronically in this Court through the ECF Filing system, this 12th day of December, 2023, and that a copy has been served upon the following:

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